IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Mrs. Jeevanlata
Vs.
The Panchayat Samiti, Kherwada & Anr.

S.B. CIVIL WRIT PETITION NO.62/1994 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 16th October, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Sanjay Mathur, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate for respondents.

BY THE COURT

In this writ petition, the petitioner has assailed the validity of the order dated 23rd June, 1993 passed by Vikas Adhikari, Panchayat Samiti, Kherwada and the consequential

order dated 07th December, 1993.

By these orders, the pay scale of petitioner Mrs. Jeevanlata which was earlier fixed the selection scale on completion of 15 years of service w.e.f. 01st September, 1990 when she was fixed on Rs.1480/-, was reduced to Rs.1260/- on the premise that such benefit was admissible to only trained teachers. By order dated 07th December, 1993 recovery of a sum of Rs.20,265/- was ordered to be made from the petitioner.

The respondents have passed these impugned orders on the premise that the selection scale on completion f 15 years was required to be granted to only trained teachers and the petitioner was untrained and passed BSTC examination on 10th November, 1982. She was therefore not entitled to receive selection scale on completion of 15 years in accordance with the provisions of Government Circular dated 23rd January, 1985.

Learned Single Judge of this Court in Smt.Annama Chako Vs. State & Ors., reported in 1998 WLR (Raj.) 424 while considering this very issue held that the action of the respondents in withdrawing the selection grade and directing consequential recovery was illegal and could not be sustained.

The Division Bench of this Court in Pushpalata Thada & Ors. vs. State of Rajasthan, reported in 2001 WLC (Raj.) 560 held that the Circular dated 27th July, 1995 which provided that for the purpose of grant of selection scale, the service of teachers be counted only from the date he/she acquired training and in relation to those who were untrained on completion of 10 years of service is absolutely illegal, and void ab initio.

While upholding the judgment of the learned Single Judge in Smt.Annama Chako (supra) Division Bench of this Court in Pushplata Thada held that the action of the respondents in withdrawing benefit of selection scale was violative of principles of natural justice and recoveries made

pursuant thereto were illegal. Ratio of the judgment of the Division Bench was summed up in para 16 which for the facility of the reference is reproduced as under:-

> "**16.** The withdrawal of selection grade, in our opinion, is not proper. The petitioners in all these cases shall be entitled for grant of selection grade and after having granted the selection grade, in accordance with the instructions issued by the Department, the selection grade will be issued without issuing any show cause notice to any of the petitioners after five years of such sanction. As rightly pointed out by the learned Single Judge in the case of Smt. Annama Chako Vs. State & Ors. (supra), as it involves the basic rights, involving civil consequences, the Selection Grade could not have been withdrawn except by issuing a show cause notice. We, therefore, held that the action of the respondents was violative of principles of natural justice and could not be sustained in the eyes of law. We make it clear that now as we have quashed the impugned action of the Government in each case, the respondents are not permitted to initiate recovery proceedings. In case, any recovery has already been made, the recovered amount shall be refunded to the petitioner concerned. It is brought to our notice that on account of the impugned circular, the pay scale has been reduced to some of the petitioners. In view f the order, now passed by us in these batch of writ petitions, the pay scale is also to be revised to those teachers who pay structure has been reduced in view of the impugned

> circular and the arrears may be paid to the concerned petitioners within three months from the receipt of certified copy of this order."

The appointment of even untrained teachers made after following due process of law by regular mode was treated as substantive for the purpose of grant of selection scale even if the training was undertaken by imparted to them at a later stage. Subsequently, the Government of Rajasthan also issued a Circular on 27.07.1995.

The Government challenged the aforesaid judgment before the Hon'ble Supreme Court and having lost there through its Director of Secondary Education Rajastha, Bikaner issued a Circular No.Shivira/Madhya-Vidhi/V-3/Ch.Ve.Maa./2002-03 dated 30th April, 2003 requiring their officers to make compliance of the judgment given in the case of Pushpalata Thada (supra). In fact originally Circular was issued by the Government in its Finance Department bearing No.P.20(1)Finance/Rule/92-X dated 12th April, 2002 whereby it was directed that while making recruitment on the post of

teachers in Panchayati Raj Institutions, some of the candidates who were untrained were given such appointment. It was clarified that such persons are entitled to reckon the period of their service from the date of their initial appointment for the purpose of seniority and service experience. However, while doing so, care should be taken to ensure that their appointment must have been made at the competent level and there should be no other deficiency in the appointment except the training. Subsequently, the Government in its Finance Department issued direction vide letter No.920(1) Finance/Rule/92-X dated 29th May, 2003 to the Director of Primary as well as Secondary School Education Rajasthan for making compliance of the judgments of this Court and later the Hon'ble Supreme Court in regard to grant of selection scale. The consequential instructions were issued by the Director, Secondary School Education for Rajasthan, Bikaner vide letter No.Shivira-Madhya/Isthari-A/34042/1998 dated 08th April, 2003 addressed to all the Dy. Directors and District Education Officers. The aforesaid Director again reiterated such instructions vide his Circular No.Shivira/Madhya-Vidhi/V-

3/Ch.Ve.Maa./2002-03 dated 30th April, 2003

In view of the aforesaid discussion, the writ petition is allowed. The orders dated 23rd June, 1993 passed by the Vikas Adhikari, Panchayat Samiti, Kherwada and the order dated 07th December, 1993 be quashed and set aside. The petitioner shall be entitled to all the consequential benefits. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-